

## **AMERICANS WITH DISABILITIES ACT**

It is the policy of the City of Milwaukee (City) to provide equal employment opportunities for all employees and applicants for employment with the City regardless of disability. It is the City's policy, in compliance with the Americans with Disabilities Act (ADA) and the Wisconsin Fair Employment Act (WFEA) to prohibit discrimination and harassment against a qualified individual with a disability, because of the disability, with regard to application procedures, hiring, advancement, compensation, job training, discharge and other terms, conditions and privileges of employment. The City will reasonably accommodate a qualified individual with a known disability where such accommodation does not create an undue hardship on the operation of the City's business.

It is also the policy of the City that harassment of an employee or applicant because of a real or perceived disability, or a record of a disability will not be tolerated. All City employees, vendors, independent contractors, temporary workers, and other third parties with whom the City may contract with are expected to comply with this policy and to take appropriate measures to ensure that such conduct does not occur. If an employee is found to be in violation of this policy that employee will be subject to discipline, up to and including discharge.

### **Definitions**

A "qualified individual with a disability" is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such impairment; or
- Is regarded as having such an impairment.

A "qualified individual" is one who possesses the required training, skills, experience, education or other job-related requirements of the job and who, with or without a reasonable accommodation, can perform the essential functions of the job.

An "impairment" is a physical or mental condition, which currently substantially limits a major life activity. Impairment is defined by state laws as a 'real or perceived lessening or deterioration or damage to the normal bodily function or condition, or the absence of such bodily function or condition'.

An individual is "substantially limited" in a major life activity when the individual is either unable to perform a major life activity or is significantly restricted as to the condition, manner or duration under which the individual can perform the major life activity as compared to an average person in the general population. "Substantially limited" is defined by state law as a real or perceived impairment, which makes achievement unusually difficult or limits the capacity to work.

"Major life activities" include, but may not be limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

A "reasonable accommodation" may include, but is not necessarily limited to:

- Making existing facilities used by employees or applicants readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position for which the individual is qualified; and/or
- Acquiring or modifying equipment or devices, adjusting, modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

A function may be considered an "essential function" when:

- The reason the position exists is to perform that function;
- A limited number of employees are available among whom the performance of that job function can be distributed; and/or
- The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

“Undue hardship” is an accommodation for which the cost outweighs the benefit.

“Confidential Medical Records”. All employee medical records are confidential and will be kept separate from employee personnel records. All medical records, requests for accommodation and reasonable accommodations will be kept confidential as required by law, except to the extent necessary to effectuate the reasonable accommodation. When a reasonable accommodation has been given to an employee with a disability pursuant to this policy neither the accommodation made nor the reason for the accommodation shall be discussed with co-workers or other employees. If asked why a job modification has been made, the responding supervisor, department head, etc. shall respond that the modification was made in compliance with state and federal laws, which also strictly prohibit disclosure of any further information.

The following exceptions may apply with regard to confidential medical records, conditions or accommodations:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodation;
- (2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (3) Government official's investigation in compliance with the ADA and/or the WFEA shall be provided relevant information on request.

Results of pre-employment medical examinations, including drug tests, will be subject to the above confidentiality provisions.

### **Production/Performance Standards**

The City will engage in an informal, interactive process with qualified individuals with a disability in need of a reasonable accommodation. The goal of this process will be to identify the precise limitations resulting from the disability and potential reasonable accommodations that could eliminate any artificial barriers in the workplace that will allow the employee or applicant with a disability to perform the essential functions of the job. This process requires cooperation and participation by both the employee/applicant and the City. In no circumstances, however, will the City lower quality, performance or production standards to make an accommodation

### **Interactive Accommodation Process**

When an employee or applicant makes a request for an accommodation, the City will initiate an interactive accommodation process with the individual. The City will make a good faith effort to work with the individual to reach a reasonable accommodation.

An employee requesting a reasonable accommodation may make such a request orally or in writing to their department personnel officer, immediate supervisor, section manager, department head, or to the Department of Employee Relations (hereinafter referred to as 'City representative'). If the employee request is made to his or her immediate supervisor, the supervisor, or manager shall report the accommodation request or complaint, as the case may be, to either the Department personnel officer or Department head, who shall initiate the interactive accommodation process as outlined below.

- *The appropriate City representative will meet with the employee who has requested an accommodation;*
- *The City representative will request information about the condition or impairment and the limitations of the employee;*
- *The City representative will ask the employee what he or she specifically is requesting as a reasonable accommodation;*
- *The City representative shall then investigate the feasibility and reasonableness of the requested accommodation; and,*
- *Either make the accommodation, discuss available alternative that would also be effective reasonable accommodations or explain why the condition or impairment cannot be reasonably accommodated without imposing an undue hardship.*

The determination of a reasonable accommodation is a cooperative process in which both the City and the

employee must make reasonable efforts to define an effective reasonable accommodation and exercise good faith during the process. The interactive process is meant to identify the individual's functional limitations and the potential reasonable accommodation that is needed. It does not guarantee that the employee will be given their favored accommodation, but that the City will attempt to reach a reasonable and effective accommodation where one can be given without creating an undue hardship.

The City is entitled to require the employee/applicant to provide reasonable documentation with regard to the employee's/applicant's disability and functional limitations. The City may require documentation to establish that the employee has an ADA disability, and that the disability necessitates a reasonable accommodation. All such requests for documentation shall be job related and consistent with business necessity. In cases where a disability is not obvious, the City may ask for documentation as to the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activities. If the requested documentation is ambiguous or insufficient, the City may require the employee (or applicant) to sign a limited release allowing the employer to submit specific, job-related questions to the employee's health care provider and/or may request the employee to submit to a job-related medical examination by a health care provider of the City's choice, at the City's expense.

### **Medical Examinations and Inquiries**

The City will not ask job applicants or current employees about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer will be conditioned on the results of a medical examination, which is required of all entering employees in similar jobs. Current employees may be required to submit to a job related medical or psychological examination consistent with the business needs of the City.

All candidates who accept employment offers for non-exempt positions, are reinstated after resignation, or who transfer from Milwaukee Public Schools must pass a pre-employment drug test as a condition of employment, in compliance with the City's pre-employment drug testing policy. Exempt employees may be required to successfully complete a pre-employment drug test if requested by the authorized appointing authority.

### **Drug and Alcohol Abuse**

The ADA does not cover employees and applicants currently engaging in the use of illegal drugs. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. The City will hold illegal drug users and alcoholics to the same performance standards and work rules as other City employees.

### **Safety**

All City employees are required to comply with all workplace safety standards. The City is committed to providing a safe work environment for all of its employees. Any applicant who poses a direct threat to the health or safety of themselves or other individuals in the workplace that cannot be eliminated by a reasonable accommodation will not be employed in that position. Similarly, current employees who become disabled and pose a direct threat to themselves or others, which threat may not be eliminated by reasonable accommodation, will be placed on an appropriate leave. An attempt will be made to place applicants and employees in positions for which they are qualified and in which they do not pose a direct threat to the safety of themselves or others.

### **Coordination with Other Policies**

This policy regarding qualified individuals with disabilities will be coordinated with all other City policies such as safety, workplace violence prevention, drug testing, job sharing, flextime, leave, etc. This policy will also be coordinated with other applicable laws such as the Family Medical Leave Act, the Wisconsin Worker's Compensation law, as well as Civil Rights laws. Because it is impossible to write a rule or policy which covers every circumstance the City reserves the right to impose proper discipline as necessary to its efficient business operations. The City reserves the right to amend or interpret this policy as necessitated by individual circumstances and/or changes in state and federal laws.

### **Compliance and Complaint Procedure**

It is the responsibility of all employees of the City to ensure that this policy is understood, abided by, and carried out by everyone. All employees and staff are expected to cooperate and to support actively the efforts of the City to ensure that this policy will be effective.

Employees or applicants who believe that they have been the victim of discrimination or harassment on the basis of a real or perceived disability, or the record of a disability should immediately contact their department personnel

officer, supervisor or department head. In the alternative, individuals may contact the Department of Employee Relations to report any perceived violations of this policy, or with questions or concerns regarding the City's ADA policy. The Department of Employee Relations will be responsible for implementing this policy, including investigation of claims, and resolution of reasonable accommodation, safety, and undue hardship issues.

The appropriate City representative will provide confidential assistance to individuals in an attempt to resolve issues regarding disability discrimination/harassment. In all cases, efforts should be made to resolve and correct the discrimination/harassment issues prior to filing a complaint. If an employee wishes to file a complaint, he or she may do so through DER or a Complaint Intake Advisor who is elected by each department's EEO Committee.

Investigation of complaints will begin with a signed, written statement by the complainant, and will include the parties involved in the complaint and any witnesses. Assistance in filling out the complaint will be provided if necessary. Retaliation against an employee who has filed a complaint or has assisted in an investigation is strictly prohibited.

Complaints will be investigated in a timely and confidential manner. All information concerning an applicant's medical condition or a current employee's medical condition will be kept strictly confidential unless that individual grants specific authorization to disclose it, to the extent necessary to efficiently investigate the complaint. In no event will information concerning a complaint be released to or discussed with anyone who is not involved with the investigation. The purpose of this provision is to protect the confidentiality of the complainant, to encourage the reporting of incidents in violation of this policy, and to protect the reputation of an employee wrongfully accused.

If an investigation reveals that a complaint is valid, supervisors and the department head or the Department of Employee Relations will take immediate action to stop the discrimination/harassment, to prevent its recurrence and to discipline an employee found to have violated this policy. Disciplinary action may include a verbal or written warning, suspension or discharge. Complainants and witnesses should understand that they might be required to testify in legal proceedings if their complaint results in disciplinary action being taken against another individual.